

General Information and Instructions for Using the Statutory Sentencing Guidelines

In general, the statutory sentencing guidelines apply only to felony offenses for which the penalty prescribed is an indeterminate sentence, and the sentencing court retains discretion in imposing an offender's sentence. That is, the guidelines are *not* applicable to offenses for which the applicable statute establishes a mandatory determinate penalty or a mandatory penalty of life imprisonment for conviction of the offense. MCL 769.34(5).

Specifically, the statutory sentencing guidelines apply to felony offenses listed in MCL 777.11 to 777.19 that were committed on or after January 1, 1999. MCL 769.34(2). The statutory sections listing the felony offenses to which the guidelines apply contain brief descriptions of the felonies listed there "for assistance only." MCL 777.6; MCL 777.11 to 777.19. The language contained in the statute defining the felony offense itself governs application of the sentencing guidelines. MCL 777.6. The statutory sentencing guidelines in effect on the date the offense was committed govern the calculation of an offender's minimum sentence. MCL 769.34(2).

When an offender is convicted of multiple offenses, a sentencing information report (SIR) should be completed for the sentencing offense that has the highest crime class. In instances where the sentences imposed will be served consecutively, a SIR should be completed for every crime that will be served consecutively.

STEP I. Score the Prior Record Variables

- A.** All seven prior record variables (PRVs) should be scored for all offenses. MCL 777.21(1)(b). PRVs 1 through 6 refer only to an offender's prior convictions. Concurrent and subsequent convictions should be scored in PRV 7, not in PRVs 1 through 6.
- B.** Each PRV consists of several statements to which a specific number of points are assigned. The statements appearing in each PRV quantify the specific sentencing characteristic addressed by that PRV. Determine which one or more of the statements addressed by the PRV apply to the offender and assign the point value indicated by the applicable statement with the highest number of points. Where no points are appropriate for a particular PRV, a score of zero (0) should be indicated. The total number of points assessed for all seven PRVs is the offender's "PRV level" and corresponds to the horizontal axis of the appropriate sentencing grid.
- C.** Whether a prior felony conviction or corresponding adjudication is of "high" or "low" severity is determined by reference to the crime class of the prior conviction or corresponding adjudication. Prior convictions classified in M2 (second-degree murder) or in classes A through D are "high severity" prior convictions; felonies in classes E through H are "low severity" prior convictions. An offense's crime class may be identified by consulting the offense list contained in this manual. All guidelines offenses are listed in order of their MCL number and each offense's crime class is noted.
- D.** In scoring PRVs 1 to 5, do not use any conviction or juvenile adjudication that precedes a period of 10 or more years between the discharge date from a conviction or juvenile adjudication and the commission date of the next offense resulting in a conviction or juvenile adjudication. MCL 777.50. "Discharge date" means the date an individual is discharged from the jurisdiction of the court or the department of corrections.

Apply the “10-year gap rule” by determining the length of time between the discharge date of the offender’s most recent conviction or juvenile adjudication immediately preceding the commission date of the sentencing offense. If the time span is 10 years or more, that conviction or juvenile adjudication—and any convictions or adjudications that occurred earlier—must not be counted when scoring the offender’s PRVs. If the time span between the commission date of the offender’s sentencing offense and the discharge date of the offender’s most recent conviction or adjudication is less than 10 years, that prior conviction or adjudication must be counted in scoring the offender’s PRVs.

If the offender’s most recent conviction or adjudication must be counted in scoring his or her PRVs, and if the offender has additional prior convictions or juvenile adjudications, determine the length of time between the commission date of the prior conviction or adjudication first scored and the discharge date of the next earlier conviction or adjudication. If the time span equals or exceeds 10 years, that conviction or adjudication may not be counted. If the time span is less than 10 years, that conviction or adjudication may be counted in scoring the offender’s PRVs. Use the process described above until a time span equal to or greater than 10 years separates the discharge date of an earlier conviction or adjudication from the commission date of the next conviction or adjudication or until no previous convictions or adjudications remain.

If a discharge date is not available, determine the date by adding the amount of time the defendant was placed on probation or the length of the minimum term of incarceration to the date the defendant was convicted (not the date the defendant was sentenced) and use that date as the discharge date.

STEP II. Score the Offense Variables

- A.** The crime group of the sentencing offense determines which offense variables (OVs) must be scored. The offenses to which the guidelines apply are sorted into six crime groups (MCL 777.5(a)-(f)):

- Crimes against a person (“Person”)
- Crimes against property (“Property”)
- Crimes involving a controlled substance (“CS”)
- Crimes against public order (“Pub ord”)
- Crimes against public safety (“Pub saf”)
- Crimes against public trust (“Pub trst”)

The applicable crime group may be identified by consulting the offense list contained in this manual. All guidelines offenses are listed in order of their MCL number. Along with the MCL numbers are the crime group and crime class designations for each offense and the statutory maximum penalty for conviction of the offense.

If an offense’s crime group is indicated as “variable,” it is an offense to which the guidelines apply that requires the commission of an underlying offense. In those cases, determine which OVs to score for that offense by identifying the crime group of the underlying offense.

- B.** Each OV consists of several statements to which a specific number of points are assigned. The statements appearing in each OV quantify the specific sentencing characteristic addressed by that OV. Determine which one or more of the statements addressed by the OV apply to the offender and assign the point value indicated by the applicable statement with the highest number of points. Where no points are appropriate for a particular OV, a score of zero (0) should be indicated. The total number of

points assessed for all OV's is the offender's "OV level" and corresponds to the vertical axis of the appropriate sentencing grid.

- C.** For all crimes against a person, score OV's 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, and 20. MCL 777.22(1). Score OV's 5 and 6 for homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder. MCL 777.22(1). Score OV 16 for a violation or attempted violation of MCL 750.110a (home invasion). MCL 777.22(1). Score OV's 17 and 18 if the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1).
- D.** For all crimes against property, score OV's 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. MCL 777.22(2).
- E.** For all crimes involving a controlled substance, score OV's 1, 2, 3, 12, 13, 14, 15, 19, and 20. MCL 777.22(3).
- F.** For all crimes against public order, score OV's 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. MCL 777.22(4).
- G.** For all crimes against public safety, score OV's 1, 3, 4, 9, 10, 12, 13, 14, 16, 19 and 20. MCL 777.22(5). Score OV 18 if the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(5).
- H.** For all crimes against public trust, score OV's 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. MCL 777.22(4).

STEP III. Identify the Crime Class and Proper Sentencing Grid

A. Substantive Offenses

Within each crime group, all offenses to which the guidelines apply are further categorized by the seriousness of the offense. This gradation of offense seriousness is indicated by the offense's crime class. An offense's crime class is designated by the letters "A" through "H" and "M2" (second-degree murder). M2 and A represent the most serious felony offenses, while the letters B through H represent the remaining guidelines offenses in decreasing order of their seriousness. An offense's crime class roughly corresponds to a maximum term of imprisonment for all offenses in that same crime class:

M2 / Class A offenses Imprisonment for life or any term of years

Class B offenses Imprisonment for up to 20 years

Class C offenses Imprisonment for up to 15 years

Class D offenses Imprisonment for up to 10 years

Class E offenses Imprisonment for up to 5 years

Class F offenses Imprisonment for up to 4 years

Class G offenses Imprisonment for up to 2 years

Class H offenses Jail or other intermediate sanction

In most cases, using the statutory maximum to divide the guidelines offenses into discrete crime classes resulted in categories of offenses that shared the same statutory maximum penalty. There are offenses that do not adhere to the standard, however. There is no legislative authority for the division of felonies

into crime classes and therefore, there is no prohibition against assigning an offense to a crime class that is inconsistent with the statutory maximum penalty for that offense. Rather, the statutory maximum as it appears in the statutory language defining the offense governs the upper limit of punishment possible for conviction of that offense.

For example, MCL 750.145c(3) and MCL 409.122(3) are both crimes against a person and both are designated as class D felonies. MCL 777.16g and 777.14b. According to the chart above, class D felonies are crimes for which a maximum sentence of ten years of imprisonment may be appropriate. However, the maximum term of imprisonment authorized for conviction of MCL 750.145c(3) is only seven years, while the maximum penalty authorized for conviction of MCL 409.122(3) is twenty years. In neither of the two criminal statutes is the maximum penalty ten years as suggested by their designation as class D offenses. Although the crime class designation will in most cases correspond to the maximum sentences listed in the chart above, the two offenses just discussed exemplify the directive of MCL 777.6: the express language of the statute defining the offense itself governs application of the sentencing guidelines.

B. Attempted Offenses

The sentencing guidelines apply to attempted crimes if the crime attempted is a felony offense. MCL 777.19(1). An attempt to commit an offense falls within the same crime group (person, property, CS, pub ord, pub saf, pub trst) as the offense itself. MCL 777.19(2). The attempt's crime class is determined by the class of the offense attempted:

Attempted offenses in classes A, B, C, or D: the attempt is a class E offense. MCL 777.19(3)(a).

Attempted offenses in classes E, F or G: the attempt is a class H offense. MCL 777.19(3)(b).

Attempted offenses in class H: the guidelines do not apply to an attempt to commit a class H offense. Attempted "H" offenses are to be sentenced to intermediate sanctions as defined in MCL 769.31(b).

C. Offenses Designated as "SPEC" with "Variable" Statutory Maximums

Special scoring instructions apply to offenses listed in MCL 777.18 (e.g., conspiracy, allowing a prisoner to escape, inducing a minor to commit a felony). Offenses in MCL 777.18 are guidelines offenses predicated on the offender's commission of an underlying offense. Each offense listed in MCL 777.18 is given a crime group designation applicable to that offense without regard to the crime group designation of the underlying offense on which the MCL 777.18 conviction is based. That crime group designation determines the OVs that must be scored for the offense.

For example, MCL 777.18 includes an offense identified as MCL 750.157c. MCL 750.157c prohibits an individual from recruiting or inducing a minor to commit a felony and under MCL 777.18, MCL 750.157c is designated as a crime against a person. This crime group designation under MCL 777.18 – "person" – remains the same no matter what offense forms the basis for charging the offender with violating MCL 750.157c. Suppose an offender is convicted under MCL 750.157c of inducing a minor to commit arson of real property. Arson of real property, MCL 750.73, is a class D crime against property for which the statutory maximum penalty is 10 years of imprisonment. However, MCL 750.157c, the statute under which the offender was convicted, is designated as a crime against a person

and that designation trumps the crime group designation of the underlying offense. Therefore, to score an offender convicted of inducing a minor to commit arson of real property, only those OVs appropriate to crimes against a person should be scored.

The crime class for a guidelines offense under MCL 777.18 is determined by the crime class of the substantive offense. MCL 777.18 offenses are identified on the MCL crime list included with this manual as having a crime class of “SPEC.” When “SPEC” (for “special”) appears in the class column, determine the crime class of the underlying offense. Because the penalties authorized by statute for conviction of the underlying offenses vary from offense to offense, the statutory maximum penalty for “SPEC” offenses is indicated as “Variable.”

D. Habitual Offender Sentencing

The nine sentencing grids in MCL 777.61 to 777.69 represent the proper sentence ranges for offenders not being sentenced as habitual offenders. No separate grids reflecting the recommended sentence ranges for habitual offenders exist in the statutory provisions governing felony sentencing. However, statutory authority exists for determining the upper limit of a habitual offender’s recommended minimum sentence by adding a specific percentage of the range calculated for first-time offenders to the upper limit in the cells of the existing sentencing grids. MCL 777.21(3)(a)-(c). In previously published sentencing manuals, the sentencing grids for first-time offenders and for habitual offenders were designed separately so that reference to one grid was limited to either habitual offender ranges or first-time offender ranges. The sentencing grids published in this manual are comprehensive grids that combine the minimum sentences recommended under the guidelines for all offenders – both first-time and habitual.

The appropriate sentence ranges for habitual offenders are calculated as follows:

Second Habitual Offender (HO2) – increase the upper limit of the appropriate cell by 25%

Third Habitual Offender (HO3) – increase the upper limit of the appropriate cell by 50%

Fourth Habitual Offender (HO4) – increase the upper limit of the appropriate cell by 100%

Step IV. Determine the Recommended Minimum Sentence Range

A. Using the Sentencing Grids

Sentencing grids for all offenses to which the guidelines apply are located in MCL 777.61 to 777.69. There are nine different grids, one each for crimes in classes A, B, C, D, E, F, G, and H, and one for second-degree murder (M2). Each sentencing grid is divided into “cells” corresponding to the number of offense variable (OV) levels and prior record variable (PRV) levels applicable to the crime class represented in the grid. An offender’s recommended minimum sentence range is indicated by the numerical range in the cell located at the intersection of the offender’s “OV level” (vertical axis) and “PRV level” (horizontal axis) on the appropriate sentencing grid. MCL 777.21(1)(c). The recommended minimum sentence in each cell is expressed by a range of numbers (in months) or life imprisonment (“L”).

Specific cells in some sentencing grids are differentiated from other cells by their classification as “prison cells,” “straddle cells,” and “intermediate sanction cells.” With the exception of cells indicating

that an intermediate sanction is appropriate, the terms “straddle cell” and “prison cell” are not expressly used in statutes governing application of the sentencing guidelines.

1. **Prison cells** are those cells for which the minimum sentence recommended exceeds one year of imprisonment. Prison cells are those cells that are unmarked in the sentencing grids, i.e., not shaded (as are straddle cells) and not asterisked (as are intermediate sanction cells). When an offender’s OV and PRV levels place him or her in a prison cell, a minimum sentence within the range indicated in the cell is an appropriate sentence.
2. **Straddle cells** are those cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months. MCL 769.34(4)(c). Straddle cells appear shaded in the sentencing grids. When an offender’s OV and PRV levels place him or her in a straddle cell, a minimum sentence within the range indicated in the cell OR an intermediate sanction (which may include a jail term of not more than 12 months) is an appropriate sentence.
3. **Intermediate sanction cells** are those cells in which the upper limit recommended by the guidelines is 18 months or less. MCL 769.34(4)(a). These cells are marked with an asterisk in the sentencing grids. When an offender’s OV and PRV levels place him or her in an intermediate sanction cell, the court must sentence the offender to an intermediate sanction (which may include a jail term of 0-12 months or the cell maximum, whichever is less).

B. Additional Sentencing Considerations

1. Where the guidelines range will violate a statutorily mandated minimum sentence, the sentencing judge must sentence the offender to the minimum sentence mandated by statute. This is not a departure. MCL 769.34(2)(a).
2. The minimum sentence may not in any case (including a departure) exceed two-thirds of the statutory maximum sentence. MCL 769.34(2)(b).
3. Where the recommended minimum sentence under the guidelines falls in an intermediate sanction cell, the sentencing judge may sentence the offender below the cell range. MCL 769.34(4)(a).
4. Where the recommended minimum sentence falls in a straddle cell, the judge may sentence the offender below the cell range. MCL 769.34(4)(c)(ii).
5. If a statute mandates a minimum sentence for an offense and the statute authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure from the guidelines. MCL 769.34(2)(a).

STEP V. Requirements for Departing from the Minimum Range

A judge may depart from the guidelines sentence range only where there are “substantial and compelling” reasons to do so. MCL 769.34(3).

The judge shall not use an individual’s gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range. MCL 769.34(3)(a). Furthermore, a departure shall not be based on an offense or offender characteristic already taken into account in determining the appropriate sentence range, unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight. MCL 769.34(3)(b).

If the judge imposes a minimum sentence that represents an upward or downward departure from the appropriate sentence range, the court must state on the record the reasons for departure. MCL 769.34(3).

If the judge imposes a minimum sentence that is longer or more severe than the appropriate sentence range, the court shall advise the defendant on the record and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range. MCL 769.34(7).

